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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re H.B., et al., Persons Coming  
Under the Juvenile Court Law.

B293379

(Los Angeles County  
Super. Ct. No. 18CCJP05177)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSEPH B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Rashida A. Adams, Judge. Affirmed.

Richard L. Knight, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant  
County Counsel, and Stephen D. Watson, Deputy County Counsel, for  
Plaintiff and Respondent.

Appellant Joseph B. (Father) is the father of two girls, “Ha” born in May 2015 and “He” born in September 2016. The juvenile court asserted jurisdiction over the girls under Welfare and Institutions Code section 300, subdivisions (a) and (b) due primarily to domestic violence perpetrated by Father.<sup>1</sup> He contends the juvenile court’s finding that visitation with Father would be detrimental to the girls was not supported by substantial evidence, and that the court abused its discretion by issuing an order at the disposition hearing precluding any visitation with his daughters until his release from incarceration. We affirm the court’s order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The family came to the attention of the Department of Children and Family Services (DCFS) in July 2018. On July 7, the children’s mother, J.E., (Mother) and the children were staying at a motel with a cousin and her children. Mother had gone there to get away from Father after an argument. Mother originally told the caseworker that Father had appeared at the motel, threatened to kill everyone, and left with Ha. Father, who was on probation at the time, was not holding a weapon when he made the threats but owned a rifle, later found loaded on the floor of his car.<sup>2</sup> The next day, Mother and Father both denied that Father had threatened anyone. However, the caseworker was provided a police report initiated by the cousin and her children. They told police officers that appellant had come to their room and threatened to shoot them if they did not tell him where Mother was.

On August 10, 2018, DCFS filed an application for a court order authorizing removal of the children. Days before the August 16 hearing, Father went to Mother’s place of employment and physically assaulted her,

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father had a criminal history that included convictions for battery in 2014 and carrying a loaded firearm in public in 2016. Father was imprisoned for approximately two years when Ha was five months old and Mother was pregnant with He. Father had been released from incarceration six months earlier, in January 2018.

hitting her, kicking her, pulling her hair, dragging her and threatening her with a “shank.” Mother’s co-workers called the police. Father fled before the police arrived and texted Mother the next day, threatening to kill her. At the hearing, the children were detained and placed in foster care.

Interviewed for the jurisdictional hearing, Mother reported prior incidents of domestic violence. When Father was incarcerated in 2016, Mother stopped contacting him and became involved with someone else. After Father’s release in January 2018, Mother agreed to try to work things out with him. Sometime thereafter, Mother was driving with Father and one of the girls, when Father demanded that she take him to her ex-boyfriend’s house. Father punched Mother and pulled her hair when she denied knowing where the ex-boyfriend lived. On another occasion, Father threatened to kill Mother and the children with a handgun if Mother did not provide details about her relationship, pointing the gun at He and asking “[w]hich one do you want to go first?” In March 2018, Mother walked Ha to her parents’ house for a visit, intending to go back to get He. When she returned, Father would not let her leave their house with the girl. The maternal grandparents came by to check on Mother, and Father threatened to hurt the grandparents unless they left. He also had hit the grandfather, broken windows at the grandparents’ home, and tried to break down their door.

By the time of the jurisdictional report (October 2018), Mother was participating in parenting classes, domestic violence awareness, and individual counseling. She promised to have no further contact with Father. Father was incarcerated, awaiting trial. He had been offered a 17-year plea deal, which he had declined. Father told the caseworker he did not want the girls “to know about this life,” and said that they did not need him. He did not inquire about visitation.

At the October 10, 2018 jurisdictional hearing, the court found true that Father and Mother had a history of engaging in violent altercations in the children’s presence; that Father had threatened to kill Mother, the cousin and the cousin’s children on July 7, 2018; that Father physically assaulted Mother and threatened Mother, the children and the grandparents in July 2018 and on prior occasions; and that Father placed Ha in a detrimental and endangering situation by possessing a loaded rifle within access of the child

in his car. Jurisdiction was asserted under section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect). DCFS sought to have the children detained from both parents, and asked that no reunification services be provided for Father. At the request of the children's counsel, the court continued the dispositional phase of the hearing to re-assess Mother and her progress.

At the October 17, 2018 dispositional hearing, DCFS continued to recommend the children be detained from both parents. DCFS counsel expressed concern that Mother could not be counted on to protect the children if Father prevailed at trial and earned his release. Because Father was incarcerated at the time of the hearing and likely to remain so for some time, the children's attorney recommended they be returned to Mother, observing that she was actively participating in counseling and a domestic violence program. DCFS also continued to recommend no reunification services for Father. Father's counsel did not contest that recommendation, but requested a visitation schedule that included monthly telephonic and personal contact while Father was imprisoned.<sup>3</sup>

The court released the children to Mother and instructed DCFS to provide family maintenance services to her.<sup>4</sup> The court issued a stay away and no-contact order for Father, and warned Mother to have no contact with him. The court found by clear and convincing evidence that as Father was likely to be incarcerated for a significant period of time and had only a

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<sup>3</sup> Father's counsel acknowledged that Mother could not be required to take the children to visit Father, and admitted she did not know who would have the responsibility of bringing the children to visit Father in prison should his request for visitation be granted.

<sup>4</sup> "Family maintenance services are 'activities designed to provide in-home protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families.'" (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1154, fn. 8, quoting § 16501, subd. (g).) Without citation to the record, Father claims in his reply brief that the court ordered maintenance services for him. We find no support for this assertion. At the hearing, the court ordered DCFS to provide family maintenance services "to the mother."

minimal relationship with the children due to their young age and his current and previous incarcerations, providing him reunification services would be contrary to their best interests.<sup>5</sup> The court further found that visitation while Father was incarcerated would be detrimental to the children in view of (1) Father's conduct, which included not only violent behavior toward Mother but threats to harm his children and the children of others; (2) the tender age of the children; (3) the lack of a significant relationship between Father and the children; and (4) the environment the children would be exposed to during custodial visits. The court's order provided that future visitation would take place only after Father's release from custody and would be monitored. Father appealed the visitation order.<sup>6</sup>

## DISCUSSION

Quoting section 362.1, subdivision (a)(1), Father contends that "visits must be provided between a parent and [his or] her child to 'maintain ties between the parent . . . and the child,'" and that those visits should be "as frequent as possible, consistent with the well-being of the child." Section 362.1, subdivision (a)(1) states that any order "placing a child in foster care" and "ordering reunification services, shall provide . . . [¶] . . . for visitation between the parent . . . and the child," unless the court finds that visitation will jeopardize the safety of the child. Courts have said that visitation is "mandatory," "an essential part of a reunification plan," and "crucial," even if the parent receiving reunification services is incarcerated. (*In re C.C.* (2009)

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<sup>5</sup> In so doing, the court applied section 361.5, subdivision (e)(1). That provision states that "[i]f the parent . . . is incarcerated," the court need not provide reunification services if it determines "by clear and convincing evidence" that "those services would be detrimental to the child." In determining detriment, the court "shall consider," among other things, "the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime . . . , the degree of detriment to the child if services are not offered, and . . . the likelihood of the parent's discharge from incarceration . . . within the [statutory] reunification time limitations." (§ 361.5, subd. (e)(1).)

<sup>6</sup> Mother is not a party to this appeal.

172 Cal.App.4th 1481, 1491; *In re J.N.* (2006) 138 Cal.App.4th 450, 458; accord, *In re T.M.* (2016) 4 Cal.App.5th 1214, 1218; *In re Dylan T.* (1998) 65 Cal.App.4th 765, 773.)

The same is not true where, as here, the court declines to provide reunification services to an incarcerated parent under section 361.5, subdivision (e)(1). If the court concludes that provision of reunification services would be unwise under subdivision (e)(1), subdivision (f) states: “The court *may* continue to permit the parent to visit the child *unless* it finds that visitation would be detrimental to the child.” (Italics added.)<sup>7</sup>

The statute was interpreted and applied in *In re J.N.*, *supra*, 138 Cal.App.4th at page 454, where the mother had been imprisoned after abusing and causing the death of the minor’s three-year-old sister. The court issued a no-contact order, and years later, when a new proceeding was initiated due to the neglect of the minor by his father, re-instituted the order. (*Id.* at p. 456.) In response to the mother’s contention on appeal that visitation must be ordered unless the juvenile court made a finding of detriment by clear and convincing evidence, the appellate court stated: “The

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<sup>7</sup> Moreover, as respondent contends, section 362.1, by its terms, does not apply where, as here, the children are not placed in foster care, but are left with the custodial parent under a family maintenance program. That situation is governed by section 362. (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19-20 [section 362 applies to situations where dependent child is placed in parental custody at disposition subject to DCFS supervision]; *In re A.L.* (2010) 188 Cal.App.4th 138, 143 [same].) Section 362, subdivisions (a) and (c) require the court to provide family maintenance services to the custodial parent and permit the court to make “any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child,” but contain no provisions requiring either reunification services or visitation for the other parent. As explained in *In re Pedro Z.*, “the focus of dependency proceedings ‘is to reunify the child with *a parent*, when safe to do so for the child. [Citations.]’ [Citation.] The goal of dependency proceedings -- to reunify a child with at least one parent -- has been met when, at disposition, a child is placed with a former custodial parent and [that parent is] afforded family maintenance services.” (*In re Pedro Z.*, *supra*, 190 Cal.App.4th at p. 20.) Because the court here acted under section 361.5, we focus on that provision.

statute [section 361.5, subdivision (f)] does not say . . . that the court ‘shall’ continue to permit visitation unless it finds that visitation would be detrimental to the child. The term ‘may’ in subdivision (f) does not mean ‘shall.’” (*Id.* at p. 457.) The court construed the word as permissive, “i.e., as giving the juvenile court discretion to permit or deny visitation when reunification services are not ordered, unless of course it finds that visitation would be detrimental to the child, in which case it must deny visitation.” (*Id.* at p. 458.) It explained that “visitation is not integral to the overall plan when the parent is not participating in the reunification efforts. This reality is reflected in the permissive language of section 361.5, subdivision (f).” (*Id.* at pp. 458-459.)<sup>8</sup> In other words, “[o]nce the juvenile court has denied reunification services under subdivision (e)(1), section 361.5, subdivision (f) gives the court *discretion* to allow the parent to continue visitation with his or her child unless it finds that visitation would be detrimental to the child. In the latter event, subdivision (f) provides that the court does not have discretion to continue to permit visitation.” (*Id.* at p. 457.)

In exercising its discretion, “section 361.5, subdivision (f) does not dictate a particular standard the juvenile court must apply . . . to permit or deny visitation between a child and a parent who has not been receiving reunification services,” such as “detriment to the child.” (*In re J.N.*, *supra*, 138 Cal.App.4th at p. 459.) Accordingly, the court may simply consider the best interests of the child. (*Ibid.*) In our review of the juvenile court’s decision, “we apply a very high degree of deference to the decision of the juvenile court.” (*Ibid.*)

Here, the court first considered whether to provide Father reunification services. It found under section 361.5, subdivision (e)(1) that providing such services to Father would be detrimental to the children. Father does not dispute that finding here, and did not challenge it below. Accordingly, whether to grant visitation was within the court’s discretion under

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<sup>8</sup> In *In re Korbin Z.* (2016) 3 Cal.App.5th 511, this court expressed agreement with *In re J.N.*, quoting it for the proposition that “[v]isitation is an essential part of a reunification plan,” but “not integral to the overall plan when the parent is not participating in the reunification efforts.” (*In re Korbin Z.*, at p. 517.)

subdivision (f), unless it found that visitation would be detrimental to the children, in which case it was required to deny visitation.

The court went on to find that regular visitation while Father was in prison, whether telephonic or in person, would be detrimental to the children. As a result, it had no option but to deny Father visitation. Father contends the record does not support the finding. We disagree. Father had virtually no relationship with the children, as he was incarcerated when Ha was an infant, before He was born. He was released in January 2018, when they were two and one. By July 2018, he had re-offended and was facing a lengthy term. During the brief period of his release, he unlawfully obtained two firearms, physically abused Mother, assaulted the maternal grandfather, damaged the maternal grandparents' property, and threatened to hurt or kill Mother, the girls, the grandparents, the cousin, the cousin's children, and Mother's ex-boyfriend. The only interactions with the children described in the reports involved Father's attempts to use them against Mother -- threatening to shoot them unless Mother told him about her relationship with her ex-boyfriend, taking Ha away when Mother went to the motel to spend some time apart from him, and preventing Mother from taking He when she wanted to visit her parents. Absent extensive counseling and participation in a comprehensive domestic violence and anger management program, neither of which was likely to be available in prison, Father was in no condition to safely interact with young children.

Moreover, even were we to conclude the finding of detriment was not supported by the above factors, the court had discretion to deny Father visitation for any rational reason. The factors outlined by the court -- the children's tender ages, Father's violent and threatening behavior, and the lack of any substantial relationship -- were more than sufficient to support the conclusion that visitation would not have been in their best interests.

**DISPOSITION**

The order is affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

CURREY, J.